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Personal Laws in India: The Activisms of Muslim Women's Organizations

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Abstract

“Indian Secularism” is understood as the State’s acceptance of different religions and their practices. Consequently, the Constitution allows for Personal Laws that empower religious authorities to enforce religious laws on personal matters. However, legislators also approved a directive to establish a Uniform Civil Code (UCC) applicable to all citizens. Of the three personal law systems, Hindu, Muslim and Christian Personal Laws, the Muslim Personal Law (MPL) has received the most scrutiny. Historically, the “Muslim woman” has been seen as a passive victim. My paper explores how Muslim women, as organizers and activists are active participants in the UCC debate today. I contrast how two Muslim Women’s Organizations, the Bharatiya Muslim Mahila Andolan and Awaaz-e-Niswaan approach this issue. The organizations are structured such that agency is located in the Muslim woman. Their work through “women’s courts” fragment religious and state authorities. They differ in their vision for the UCC. The BMMA demands a gender-just, reinterpreted, codified MPL system. In contrast, AEN argues against having a MPL. Tracing this difference to a fundamental difference in their interpretation of secularism, I argue that by embodying these varying ideals of secularism, the activism of AEN and the BMMA are able to lead the UCC discourse, hitherto appropriated by political and religious entities, to new directions.

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List of Abbreviations

AEN: Awaaz-E-Niswaan

AIMPLB: All India Muslim Personal Law Board

AIWC: All India Women's Conference

BJP: Bharatiya Janata Party

BMMA: Bharatiya Muslim Mahila Andolan

CrPC: Indian Criminal Procedure Code

INC: Indian National Congress

MPL: Muslim Personal Law

MWRN: Muslim Women's Rights Network

RSS: Rashtriya Swayamsevak Sangh

UCC: Uniform Civil Code

VHP: Vishwa Hindu Parishad

Chapter One - A Sense of Us: Navigating Differences

Introduction

Inspired by the Social Science lessons on India's cultural diversity, as a young girl, I understood the India I knew and had grown up in as the embodiment of "Unity in diversity." Despite frequent reports of riots, protests, and marches in the name of religion, I clung to this description. India is home to six major religions, twenty-two official languages and twenty-nine states many of which have their own distinct cultures. As a young girl, I was proud of India's diversity.

With over 80% of the population of 1.2 billion people being Hindus and about 300 million speaking the dominant language, Hindi, my attachment to the ideal of "unity in diversity" was not hard to uncover.¹ As a Christian, I belong to the second-largest religious minority which forms only 2.3% of the nation.² As a South Indian, I did not speak the dominant language in the country. My family's history did not include touchstones such as the Kargil War with Pakistan and the Partition moments that defined the creation of the Indian State. I'm unsure how many in my generation, even among North-Indians, have been directly affected by these events. Certainly, a general perception exists that States in the South, located far from contentious borders, played a less important role in India's formation. Once, a Pakistani acquaintance, upon meeting me, remarked, "You're from Kerala? Ah, you're not even really Indian!"

¹ Office of the Registrar General and Census Commissioner of India, "Religion," Government of India – Ministry of Home Affairs, http://censusindia.gov.in/Census_And_You/religion.aspx (accessed January 7, 2015); Office of the Registrar General and Census Commissioner of India, "Language," Government of India – Ministry of Home Affairs, http://censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/ (accessed January 7, 2015)

²Office of the Registrar General and Census Commissioner of India, "Religion."

In multiple instances I have found myself defensive about my national identity. However, the first time I ever truly felt the threat of dispossession was not until the 2014 General Elections were underway. Hearing the Rashtriya Swayamsewak Sangh (RSS), a right-wing nationalist organization often serving as the ideological backbone for the ruling political party *Bharatiya Janata Party* (BJP), champion the *Hindutva* ideology of establishing a hegemony of Hindus and a Hindu way of life, I wondered whether there would cease to be a space to be Indian *and* Christian.³ The continuing stream of similar claims and the subsequent victory of the BJP at the General Elections in May 2014 further solidified my fear.⁴ Will I soon begin to feel like an outsider in the very country I called home?

My personal history reflects India's long struggle with how to construct a national identity while also granting specific rights to religious communities and minorities. In this thesis, I explore how this question shapes the discussion of the Uniform Civil Code (UCC). I examine the UCC debate in the context of the Shah Bano case; a landmark legal action filed by a Muslim woman in her sixties which led to a national debate on the UCC. A careful examination of the case reveals that key players in the debate reduced Shah Bano into a passive victim to co-opt her into their narratives. I argue that the activism of Muslim women's organizations in India today successfully challenge this narrative of "the plight of the Muslim woman." It is also my contention that the activism of these organizations, specifically the *Bharatiya Muslim Mahila Andolan* and *Awaaz-E-Niswaan*, place agency firmly with the Muslim woman, fragment

³ In the RSS's own words, the ideal of the organization is to carry the nation to the pinnacle of glory, through organizing the entire society and ensuring protection of Hindu Dharma. Quote taken from the RSS's official website, <http://www.rss.org/knowus//Encyc/2014/8/22/Welcome-to-RSS.aspx> Accessed on March 22, 2015.

⁴ Times News Network, "India is our Hindu Rashtra," *Timesofindia.indiatime.com*, December 21, 2014, <http://timesofindia.indiatimes.com/india/India-is-our-Hindu-rashtra-RSS-chief/articleshow/45590219.cms> (accessed December 21, 2014)

religious and state authority and redefine secularism in unique ways. In doing so, I conclude that they are able to direct the UCC discourse to new, more productive directions.

Background to the Uniform Civil Code

India, while being a secular state, currently has three distinct sets of personal laws for Hindus, Muslims and Christians.⁵ These laws govern personal matters such as marriage, adoption, and inheritance. At the time of Independence from British rule and in the aftermath of Partition, the Constitution framers agreed that instituting a Uniform Civil Code and abolishing personal laws would risk launching the newly formed nation into chaos. At the same time, legislators within the Assembly argued for a common civil code. Recognizing the value of a common civil code and yet bearing in mind the implausibility of instituting such a code given the realities on the ground, the Constituent Assembly compromised by including the following General Directive in Article 44 of the Indian Constitution: “The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India.”⁶

Herein lies the crux of the Uniform Civil Code debate: the co-existence of personal laws alongside a principle that outlines the UCC as an ideal to strive for. This debate, with some parties arguing for a UCC while others argue against it, continues to this day.⁷ Advocates for the

⁵ The *Constitution (Forty Second Amendment) Act of 1976* in an Amendment to the Preamble to the Constitution substituted the words “SOVEREIGN DEMOCRATIC REPUBLIC” with “SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC”

⁶ Javed Majeed, “The crisis of secularism in India,” *Modern Intellectual History* 7 (3) (November 2010): 654

⁷ Nivedita Menon, a women’s rights activist, in her article *A Uniform Civil Code in India: State of the Debate in 2014*, provides a brief, but good, overview of the UCC debate. In addition to being published by the Feminist Studies journal, the article was also posted on a blog *Kafila* which can be accessed via <http://kafila.org/2014/10/01/uniform-civil-code-state-of-the-debate-in-2014/>. The discussion in the comments section following Menon’s article in which Menon herself participates is illuminating of some of the predominant views with regard to the UCC.

UCC argue that the varying personal laws allow for gender discriminatory practices. Those against the UCC say it will impose practices of Hinduism, as it is the dominant religious group, on the entire nation. Others argue that there is no guarantee that even a common code will protect gender equality.

Entering the Uniform Civil Code Discourse: Research Methodology

I chose to investigate the UCC debate because it is a site of convergence for many questions which are of personal significance to me. My decision was initially led by my understanding of the UCC as a manifestation of the debate between multicultural rights and human rights. While studying at the University of Oxford, I took *Theory of Politics* and *South Asian Politics*: courses that prompted me to view the UCC through the lens of multiculturalism and human rights.

However, this lens did not reflect the dominant way in which the UCC was debated in India. Rather, the UCC debate was framed by religion. This is a framework one can easily identify upon a brief look at the numerous news articles, opinion pieces and televised discussions.⁸ The Muslim Personal Law (MPL) came under the most scrutiny for allegedly being the most gender discriminatory. Every discussion on the UCC evoked the story of Shah Bano; a case that I explore in depth in the second chapter. These discussions saw the earnest participation of political parties, the BJP and the Indian National Congress (INC), albeit in different ways. The other prominent perspective was that of the *All India Muslim Personal Law Board* (AIMPLB).

⁸ Express News Service, "Uniform Civil Code Debate: Do not confuse religion with personal law," *newindianexpress.com*, August 2, 2014 <http://www.newindianexpress.com/magazine/voices/Uniform-Civil-Code-Debate-Do-Not-Confuse-Religion-with-Personal-Law/2014/08/03/article2357983.ece> (accessed November 21, 2014)

This board was established in 1973 with the aim of protecting the MPL.⁹ The AIMPLB, being the dominant voice coming from the Muslim community, was assumed to be the voice of the Muslim community as a whole. Couched in these discussions of the MPL would often be the “plight” of the Muslim woman suffering because of the allegedly gender discriminatory nature of the Muslim Personal Law.

I was struck by the absence of Muslim women’s voices in this discourse. While this absence was not surprising given the low socio-economic conditions that much of the Muslim community in India suffers, what surprised me was the lack of attention this received even amongst those commenting on the discourse.¹⁰ Within the debate, when the “Muslim woman” was evoked, it was as a homogenous entity for whose sake a UCC should be instated. At other times Muslim women were referred to as the custodians of the Muslim community. They were the objects of the conversations but never the speakers themselves.

The dominant actors in the UCC debate, particularly the BJP and the Muslim clergy leadership, constructed the “Muslim woman” as an entity devoid of agency i.e., as an ideal victim. This reduction made it easier for women to be co-opted into the narratives of other parties in the debate. The case of Shah Bano is the most well-known with regard to the UCC debate in India. Shah Bano’s case, moving from the local court to the Supreme Court of India, and in the process, attracting religious authorities and major political parties, snowballed into a national controversy. The second chapter of this work, by tracing the case of Shah Bano, presents

⁹ All India Muslim Personal Law Board, “Introduction,” AIMPL Board, <http://aimplboard.in/introduction.php> (accessed February 9, 2015); The AIMPLB website describes the formation of the Board as a result of a Convention of “Ulema, leaders and various Muslim organizations who successfully convinced the Indian Muslim community of the risk of losing applicability of Sharia laws and that a real and concerted move by the community was needed to defeat the conspiracy.”

¹⁰ Ministry of Minority Affairs, *Social, Economic and Educational Status of the Muslim Community in India from the Sachar Committee*, November 2006, <http://www.minorityaffairs.gov.in/sachar> (accessed on October 2014)

to the reader how the “Muslim woman,” who Shah Bano represented, became the ideal victim appropriated by different actors in the UCC debate. While I briefly refer to the involvement of the Judiciary and the INC, the ruling party of the time, I particularly focus on the ways in which the Muslim clergy leadership and the BJP, in conjunction with the RSS, reduced her to an entity in order to then appropriate her into their narratives.¹¹

By writing about the “Muslim woman,” my work might be construed as a continuation of the special scrutiny that the Muslim Personal Law has been subjected to, and therefore, also a perpetuation of the “plight of the Muslim woman” and the Muslim community. However, I would like to make explicit here that the reason I chose to focus on Muslim women is to draw attention to the challenges to this very notion. In the third chapter of my work, I explore Muslim women’s activism through the work of two Muslim women’s organizations in India: *Awaaz-e-Niswaan* (Voice of Women) and the *Bharatiya Muslim Mahila Andolan* (Indian Muslim Women’s Movement).¹² The second chapter discussing the reduction of the Muslim women is necessary so that the reader is able to understand the problems that these organizations are addressing in unique ways.

Chapter three examines how *Awaaz-e-Niswaan* (AEN) and the *Bharatiya Muslim Mahila Andolan* (BMMA), both organizations that identify as Muslim women’s organizations have, through their work, entered the discourse on personal laws in India. Before delving into the work of the BMMA and AEN, I provide a brief history of the women’s rights movement in India. The failure of the women’s movement to recognize the unique needs of the Muslim woman contributed significantly to the formation of separate Muslim women’s organizations.

¹¹ The reader should be aware that this chapter only hopes to familiarize the reader with a general conception of how Shah Bano was constructed and does not explore all the forces which were at play in the Shah Bano controversy.

¹² I use “activisms” to highlight the distinctiveness of the work of each of the organizations.

In light of the fact that there is very little material on Muslim women's organizations' activism in India, I travelled to India to gain a better understanding of the work that the BMMA and AEN are doing. This primary research was conducted in Bombay, India where the primary office of AEN and one of the two head-offices of the BMMA is located.¹³ Both these organizations have gained a national presence only in the past two decades.¹⁴ The offices of both the organizations are humble affairs with only the most basic facilities. They were both bustling with activity during all of my visits.

I first heard about AEN and the BMMA through my research on Muslim women activists in India. This research led me to Hasina Khan and Noorjehan Safia Niaz, leaders of AEN and the BMMA respectively. While I had initially planned to focus on Khan and Niaz as Muslim women activists and leaders, after my visits where I had the chance to speak with other leaders and workers in each of the organizations, I decided to base my work on the organizations rather than the individual women. I did so for two reasons. Firstly, I recognized that if I focused solely on two leaders for the sake of providing a contrast to the Shah Bano figure, I would be guilty of reducing the organizations' work to fit a stereotypical narrative of the sole-leader. Secondly, as I learned more about the work of the organizations, I understood that much of their success in challenging the image of the Muslim woman as the ideal victim lay in their ability to empower local women from lower socio economic backgrounds to become leaders of their communities.

Prompted by these reasons, I focus on three aspects of AEN and the BMMA to discuss how the two groups challenge the idea of the Muslim woman as a "passive victim:" the

¹³ I intentionally use the older name Bombay instead of Mumbai because of the ties that the name "Mumbai" has with right-wing Hindu nationalist ideologies.

The BMMA also has another office located in Gujarat, India. The primary research for this paper was, however, only conducted in the Bombay office.

¹⁴ AEN can trace its beginning back to 1985. However it developed a national presence only with the establishment of the Muslim Women's Rights Network in 1999. The BMMA was formed in 2007.

organizational structure, the work, and the visions. First, the third chapter argues that AEN and the BMMA are successful by showing how their organizational structure situates power in the Muslim woman. Secondly, I argue that their work through *nari adalats* (women's courts) fragments the authority of religious and state bodies. These are the very institutions that previously reduced the Muslim woman to a passive victim. Thirdly, their visions for the UCC, which are distinct from each other, reflect their varying understandings of secularism. These two visions based on two different interpretations of secularism, bring a diversity in perspectives to the UCC discourse thereby propelling the discourse in more creative ways.

Apart from learning about the work of AEN and the BMMA, one of the most exciting discoveries in my research has been revealing the key difference between them. Despite both being Muslim women's organizations, AEN and the BMMA have contrasting ways of tackling the MPL issue. At the crux of this difference is the differing ways each organization understands secularism. This discussion takes us back to where I began my inquiry into the UCC debate i.e., the question of secularism in India. The third chapter also discusses how this difference leads the BMMA to argue for the institution of a Muslim Family Act while AEN envisions a Constitution in which there is no place for any personal laws or a UCC but merely a set of gender just laws.

This difference is valuable for the spectrum and diversity that it displays in the activism of Muslim women in India; a group that had previously been homogenized and reduced to the "victim." With the BMMA reinterpreting the Quran in a more gender-just manner congruent with their understanding of secularism as the State's recognition of different religions, and with the AEN arguing for the need to recognize the rights of not just Muslim women, but also of the

LGBTQ community, both organizations, in very different ways, are pushing the boundaries of the UCC debate.¹⁵

Literature Review

Gayatri Spivak's essay *Can the Subaltern Speak?* plays a pivotal role in my argument.¹⁶ Her work informs my understanding of the position that Muslim women, in merely being talked about but never being heard, were placed in. Spivak calls this the position of the subaltern. The theoretical framework of the subaltern is a crucial tool for recognizing and problematizing the absence of Muslim women's voice in the debate. This essay inspired the focus on the subaltern nature of Muslim women like Shah Bano. Additionally, her analysis of the sati abolishment by the British as an instance of the "white man saving the brown woman from the brown man" allowed me to identify a similar relationship in the BJP's relationship with Muslim women and the male-dominated Muslim clergy relationship.¹⁷ I draw a parallel to argue that the BJP's support for the UCC comes from the BJP's intention to save Muslim women from Muslim men.

Why this tendency to protect the woman? Another postcolonial, subaltern scholar, Partha Chatterjee, has allowed me to explain why culture and tradition are situated in the woman. Chatterjee uses a "system of dichotomies" from inner/outer, home/world, feminine/masculine to trace how the preservation of tradition came to be associated with control over the woman. This connections helps to understand the Muslim clergy leadership's strong response to the Shah

¹⁵ Yasmin, interview by author, AEN Office, Bombay, India, December 21, 2014; Noorjehan Safia Niaz, interview by author, BMMA Office, Bombay, India, December 20, 2014

¹⁶ Rosalind C. Morris and Gayatri Chakravorty Spivak, eds., *Can the subaltern speak? : Reflections on the history of an idea* (New York: Columbia University Press, 2010), 21 - 79

¹⁷ Ibid., 50.

Bano case. In the same paper, Chatterjee also talks specifically about the Muslim community in India. On this matter of the minority community, he states that the “very problem of minorities is an index of the failure of the Indian nation to effectively include within its body the whole of the demographic mass that it claims to represent.”¹⁸

In addition to being a concern for religious communities, the UCC is also a gender justice issue. The articles published by *Manushi*, a leading journal on women’s rights, and the works of women’s rights activists such as Flavia Agnes and Nivedita Menon present the ways in which the women’s rights movement partook in the UCC debate.¹⁹ *Manushi*’s article on Shahnaaz Shaikh, Shah Bano’s contemporary and the founder of *Awaaz-E-Niswaan*, provides details of Shaikh’s case which allows us to contrast it with Shah Bano’s case. Menon’s paper *Uniform Civil Code – the women’s movement perspective* provides a good summary of the movement’s engagement with the debate.²⁰ The movement stepped back from the debate once the RSS and its associate organizations voices support for the UCC. A stance the movement previously took although for very different reasons. Menon’s paper explains how this came to be. Some of Agnes’ works, particularly, *Hindu men, Monogamy and Uniform Civil Code*, critiques the argument that the Hindu right-wing uses on behalf of their demand for the UCC.

The collection of essays in *South Asian Feminisms* provides an excellent critique of the women’s movement in India which, founded on the unmarked woman, only stood for the voices of Hindu women.²¹ This collection reveals why the women’s movement has failed to represent

¹⁸ Partha Chatterjee, *Colonialism, Nationalism, and Colonialized Women: The contest in India*, “American Ethnologist” 16 (4) (November 1989): 622-33.

¹⁹ Magazine Correspondent, “Abusing Religion to Oppress Woman: A Challenge to Muslim Personal Law from a Muslim Woman,” *Manushi*, 1984, 9 – 13.

²⁰ Nivedita Menon, “Uniform Civil Code – The Women’s Movement Perspective,” *Kafila*, entry posted October 1, 2014, <http://kafila.org/2014/10/01/uniform-civil-code-state-of-the-debate-in-2014/> (accessed October 15, 2014)

²¹ Ania Loomba and Ritty A. Lukose, eds., *South Asian Feminisms: Contemporary interventions*, (Durham: Duke University Press, 2007).

the unique concerns of the Muslim woman. Along with Geraldine Forbes' work, *Women in Modern India, South Asian Feminisms* provides a comprehensive description and analysis of women's movements and organizations in India from the colonial to recent times.²² Understood in the context of accusations that the RSS continues to make against Muslim community members who reject the UCC, these texts are invaluable in making clear how any resistance from the minority was perceived to be anti-national and anti-secular. These analyses are crucial to this discussion because they draw attention to the needs that were overlooked and the problems that were created by the movement; a recognition that reveals the value of the work that the BMMA and AEN are now doing.

I also draw significantly from Shabnum Tejani, a historian of South Asia, and Rajeev Bhargava, a political theorist of South Asia, in order to unpack secularism when I discuss AEN's and the BMMA's vision with respect to the UCC discourse. Tejani's work, *Indian Secularism: A Social and Intellectual History*, creates categories for the different kinds of secularisms present in India today.²³ I use these categories to identify the kinds of secularisms that each of the organizations and parties in the debate are working with. Bhargava's analysis of Indian secularism in *Distinctiveness of Indian Secularism* enables him to argue for its unique nature.²⁴ In doing so, he discusses why understanding secularism merely as the separation of the State and religion is a simplistic understanding. Together, these works provide the vocabulary to discuss secularism in a complex manner. Only by complicating the idea of secularism was I able to evaluate the significance of the BMMA's and AEN's interpretations of secularism.

²² Geraldine Hancock Forbes, *The New Cambridge History of India: (From 1943 to 2008)*, Vol IV.2 of *Women in Modern India* (Cambridge: Cambridge University Press, 2008).

²³ Shabnum Tejani, *Indian Secularism: A Social and Intellectual History* (Bangalore: Permanent Black; Distributed by Orient Longman, 2007)

²⁴ Aakash Singh and Silika Mohapatra, eds., *Indian Political Thought: A Reader*. (London ; New York: Routledge, 2010.).

Case Studies: AEN and the BMMA

Equipped with these scholarly tools, I chose to test them by examining the history of Shah Bano and the UCC debate through the work of two organizations, AEN and the BMMA, created and led by Muslim women. The significance of AEN's and the BMMA's work is multifold. Both organizations negate the narrative of the "plight of the Muslim woman" as reduced to a passive victim. These organized Muslim women do so by placing agency amongst themselves. The challenge they have successfully brought to existing legal and state authorities, for instance, through the establishment of *nari adalats*, only confirm the strength of this agency.

Secondly, the question of secularism is relevant in the national sphere and has been growing in significance in the global arena. On a national scale, it is significant on one hand because this understanding of secularism as the State's recognition of different religions, the interpretation that BMMA associates with, has often been hailed as "Indian secularism."²⁵ On the other, there has been a growing number of references to the identity of "Indian" as "Hindu" from right-wing nationalist bodies proclaiming the need for *Hindutva*. How can these understandings of secularism prevent the Indian nation being reduced to *Hindutva*?

Thirdly, this question of secularism is relevant on the global scale. At a fundamental level, this is a question of navigating differences and how the State responds to such differences. Does and should the State reject these differences in an attempt to forcibly equalize its citizens? Or should and can the State create a platform where there is space for plurality? The French ban on wearing the hijab publically, where the question of secularism was contested at a global

²⁵ "Indian secularism" has been varyingly interpreted. This concept is explored in depth in the third chapter. In this paper, "Indian secularism" is used as a reference to the Government's stated intent to treat all religions and their practices equally.

arena, is an apt example of this dilemma. In an increasingly globalizing world where minority communities increasingly fear cultural absorption by larger polities, where the Muslim identity is contested on many terms, where the role of gender is increasingly being recognized and questioned, and where nationhood is being challenged and reconstituted, the work that AEN and the BMMA is doing is invaluable.²⁶

²⁶ Arjun Appadurai, "Disjuncture and Difference in the Global Cultural Economy," *Theory Culture and Society*, Vol. 7 (1990): 297 – 310.

Chapter Two- Shah Bano: From Pioneer to the Victimized Muslim Woman

PART A: The Shah Bano Controversy

Mohd. Ahmed Khan versus Shah Bano



After forty-three years of marriage, Mohammed Ahmed Khan, an affluent and well-known lawyer forced his wife, Shah Bano, out of her matrimonial home. Then, in her sixties, Shah Bano was thrown out along with her five children. Shah Bano filed for maintenance under Section 125 of the *Indian Criminal Procedure Code* (CrPC).

Figure 1: Image of Shah Bano
Source: Outlook News Site ²⁷

Section 125 of the CrPC states that if “any person, having insufficient means, neglects or refuses to maintain...his wife...a Magistrate of the first class...may order such a person to make a monthly allowance for the maintenance of his wife as the Magistrate sees fit.”²⁸ The Criminal

²⁷ Outlook India, “What if Rajiv Gandhi hadn’t caved into the Zealots?” Outlook News Website (August, 2004), <http://www.outlookindia.com/article/What-If-Rajiv-Hadnt-Caved-In-To-The-Zealots/224880> (Accessed April 13, 2015)

²⁸ Vrinda Narain, *Reclaiming the Nation: Muslim women and the Law in India*. (Toronto, University of Toronto Press, 2007), 10.

This is *The Indian Criminal Procedure Code*, 1973 as amended by *The Criminal Procedure Code Amendment Act, 2002* (CrPC); The relevant provisions of section 125 of the CrPC are as follows: 125. “(1) If any person having sufficient means neglects or refuses to maintain – (a) his wife, unable to maintain herself...a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the

codes in the Indian Constitution are applicable universally for all citizens of the country. This is in contrast to some civil laws, in particular, personal laws, which are applied in accordance to the religious community of the parties.

A few months after Shah Bano filed her case, her husband divorced her under through the method of triple *talaq*, which allows Muslim husbands unilateral, unregulated divorce according to the common interpretations of Muslim Law.²⁹ It is important to understand here that the Muslim Personal Law is not codified. Instead, religious leaders of the community, the AIMPLB in particular, draw and interpret from various Islamic texts including the Quran and the Hadith.

The Magistrate ruled in favor of Shah Bano. However, she was only awarded a meagre amount of Rs.25 (\$0.42) per month.³⁰ When she appealed, the High Court of the state of Madhya Pradesh increased the maintenance amount to Rs.179.20 (\$3) per month. Following this, her husband filed for an appeal in the Supreme Court of India, the highest court in the nation.³¹

The Supreme Court of India stated that when there is a conflict, secular law should prevail over personal law. The Court explained that Muslim law does not preclude the payment of maintenance upon divorce. It also asked the State to enact a Uniform Civil Code in order to address the gender discrimination present within the personal law system.³² In line with these observations, the Court decided in favor of Shah Bano.

maintenance of his wife as the Magistrate thinks fit. – (b) Wife includes a woman who has been divorced, or who has obtained a divorce from her husband and has not remarried.”

²⁹ The triple *talaq* is a method of divorce by which a husband can divorce his wife by uttering the word “*talaq*” thrice. This method is popularly understood as being permitted by the Sharia Law; the Law upon which the MPL is based on. However, there is considerable disagreement on this matter because some argue that this interpretation which allows unilateral divorce through the triple *talaq* is a patriarchal interpretation of the Sharia Law. As the Muslim Personal Law in India is not codified, it is open to interpretation for the Muslim religious leaders.

³⁰ Conversion rate used is \$1 = 60 Rupees;

Her husband’s declared income was Rs.5000 (\$83) per month.

³¹ Judicial hierarchy in India in order of increasing hierarchy: Magistrate’s Court, District Court, High Court at the State level and Supreme Court at the National level

³² Narain, 12.

The Aftermath of the Judgment

This judgment by the Supreme Court incited a range of responses. Many conservative Muslim leaders opposed the judgment, arguing that the decision encroached upon the Muslim community's rights. They perceived the judgment as an attack on the Muslim Personal Law. The decision, they argued, interfered in their religious matters.

Muslims in India are not just another religious community. They are the largest minority religious group in India and a community that continues to experience the legacy of the Partition between India and Pakistan in 1947. In contrast to 80.5% of the Indian population which is Hindu, the Muslim community comprises only 13.4% of the population.³³ This status as the largest minority group in the nation contributed significantly in their opposition to this ruling by the Supreme Court. Even after India gained Independence, incidents which threatened the Muslim community and challenged the community's identity as Indian have continued to occur.³⁴ The *Babri Masjid* (Babri Mosque) dispute is one such incident. This incident, discussed below, is significant to Shah Bano's case because it gained momentum during the same time that the Shah Bano controversy captured the nation's attention.

A year before the Supreme Court decision on Shah Bano, a group of right-wing, Hindu-nationalist organizations had launched a campaign protesting that the *Babri Masjid*, a mosque, was built on the birth place of the Hindu God, Ram. A few years following the decision, in 1992, right-wing Hindu nationalists, including leaders of the BJP, the ruling party in India today,

³³ Office of the Registrar General and Census Commissioner of India, "Religion," Government of India – Ministry of Home Affairs, http://censusindia.gov.in/Census_And_You/religion.aspx (accessed January 7, 2015);

³⁴ The Muslim community's identity as a minority group within a nation that was predominantly Hindu began its formation from colonial times. The demand for separate electorates by Muslims, the factors that led to partition of the subcontinent into Pakistan and India, the partition itself and the aftermath of this division have all contributed significantly to how the Muslim community has asserted its minority status.

demolished the mosque. With the growth of right-wing Hindu nationalists, violence against Muslims had dramatically increased.³⁵ The sense of insecurity that the Muslim community experienced within the Indian State had given reason for the community to be more defensive about its well-being. This vulnerability contributed to the adversarial position that Muslim leaders took towards the interventions of the State.

In response to the Supreme Court judgment and further incited by climate of violence fuelled by the actions of right-wing Hindu nationalist organizations, protests against the judgment were held across the country and the issue soon became a national controversy.³⁶ In a surprising turn of events, under heavy pressure from her community and its clergy leadership, Shah Bano denounced the very judgment that was made in her favor. In an open letter, she wrote,

Since this judgment is contrary to the Quran and the hadith and an open interference in Muslim Personal Law, I, Shah Bano, being a Muslim, reject it and dissociate myself from every judgment which is contrary to the Islamic Shariat. I am aware of the agony and the distress to which this judgment has subject the Muslims of India today.³⁷

Understanding the Responses

Why would Shah Bano denounce a favorable judgment? Her son, Jameel Ahmed Khan, recalls the pressure unleashed upon his mother.

Former diplomat and prominent Muslim leader Syed Shahabuddin visited our house as did ulema (clergymen) from Indore and other cities. They told us that the verdict was against the Shariat." We didn't know much about it (Shariat provisions for maintenance etc) then... our mother was illiterate. Clergymen from India and abroad contacted us and told us that there had been a mistake and

³⁵ Christophe Jaffrelot, *Hindu Nationalism – A Reader*, (Princeton, NJ: Princeton University Press, 2007), 279.

³⁶ While much of the Muslim leadership criticized the judgment and saw it as an attack against the Muslim Personal Law and their community some, like the scholar Asgar Ali Engineer, spoke out in favor of the judgment. However, Engineer was more an exception within the Muslim community than a reflection of the community's feelings.

³⁷ Narain, 81.

explained how things should be according to the Shariat. Several people including (names a well-known cleric from Gujarat) had offered money and even a job abroad (for refusing maintenance). But I was clear that if we refused, it would not be for material gain but *Fi Sabeelillah* (for Allah's cause). Once the matter became public, journalists from India and abroad started landing up. The pressure became such that I felt winning the case wasn't so good. It would've been better if we lost. Massive processions against the judgment were staged across the country. In Mumbai, traffic was held up for hours. Even in Indore there was a lakh-strong (100,000 people) rally which passed in front of our house. This creates terror.³⁸

The Muslim religious figures and community leaders who were motivated by concerns of their religion being attacked by the State criticized the judiciary's decision. However, in addition to this, they also acted to ensure that Shah Bano herself, a member of their community, would reject the "secularism" that they felt that the judiciary was imposing upon them. This form of secularism, they felt, was a means to attack the Muslim community and to withhold legitimacy from their customs.

The site/target of the "attack" of the State was particularly sensitive because it involved the Muslim woman. Very often, and particularly in many Indian cultures, the woman is seen to embody and preserve the culture. Partha Chatterjee, a political theorist, locates a division between the "material" which needs to adapt and the "spiritual" which needs to be preserved.³⁹ Set within a colonial context, there grew a sense within the Indian subcontinent that colonizers from the West were more adept in the material realm while it was the Indians who enjoyed a richer spirituality. The material is linked to the public sphere where "man" is located. In contrast, the spiritual is linked to the inner and the domestic sphere where "woman" is placed. This analysis enables us to understand why, in the Indian mindset, preserving or protecting "culture"

³⁸ Saeed Khan, "My Mother was Wrong, Gravelly Wronged," *Hindustan Times*, November 12, 2011. <http://www.hindustantimes.com/india-news/my-mother-was-wronged-gravelly-wronged/article1-767905.aspx> (accessed October 17, 2014).

³⁹ Chatterjee, 622.

often involves “protecting” the woman from being exposed to change. Here, in the case of personal law discourse for the Muslim community, it is this very embodiment of their culture and their customs which is being challenged by the State.

Shah Bano was not merely a Muslim, she was a Muslim woman. The Muslim religious leaders reacted the way they did because the judgment had the potential of changing the Muslim woman: the embodiment of Islamic values and culture, which for those who sought to conserve the religion as it was, was not to be meddled with. When the judiciary undermined the scope of the Muslim Personal Laws, the Muslim leadership interpreted it as a betrayal of the ideal of secularism because secularism as they saw it was the State being accepting of different religious practices. While the Muslim leadership saw Shah Bano as an example of a Muslim woman, the Supreme Court saw her as an Indian citizen whose situation was to be judged on the basis that she was an equal citizen of the nation and deserving of the same rights irrespective of her religious identity.

The BJP, however, supported the Supreme Court’s judgment on Shah Bano’s behalf. But what were the BJP’s motivations behind their support for the Supreme Court judgment? The BJP’s close relationship with the RSS, an organization that has explicitly voiced anti-Muslim sentiments, strongly suggests that the party’s support for the judgment stemmed from an intention to taint the Muslim clergy leadership. These anti-Muslim sentiments are a part of the RSS’s *Hindutva* ideology.⁴⁰ This ideology of Hindu hegemony is not accommodating of the differences and diversity that India holds today; the most explicit example being that of religious differences. The BJP, in its latest manifesto, explicitly declared the creation of the UCC as a goal. This is often masqueraded as the BJP’s concern for “women’s rights.” However, the above

⁴⁰ The RSS is one of the primary voices that contributes to the picture of India as the land of the Hindus and Muslims and other minorities as foreigners who have come and “raped” Mother India; Majeed, 21

discussion is suggestive of its ulterior motives in pushing for the UCC. The UCC provides an opportunity for the BJP and the other RSS associates to taint Muslim customs as that which needs to be gotten rid of. It is, therefore in the interest of the BJP to portray the UCC as a rescue measure from the Muslim Personal Law system.

The Court's hope was to move a step closer to the UCC by placing the concern that Shah Bano brought to the court under the CrPC, which is uniformly applied, instead of placing it under uncodified personal laws that are often interpreted in a gender discriminatory manner. However, following the judgment, prompted by the opposition from Muslim leadership, the INC led government passed the Muslim Women's (Protection of Rights on Divorce) Act, 1986 (henceforth referred to as Muslim Women's Act). This Act nullified the judiciary's act of placing secular law over personal law by enacting a new law.⁴¹

⁴¹ Interestingly, this new law, arguably enacted by the INC to appease the Muslim leadership to maintain a vote bank, has been used by the judiciary to benefit Muslim women. Flavia Agnes, a lawyer and a prominent feminist in India points out how the Muslim Women's Act of 1986, has, in fact, been used by the judiciary for the protection of Muslim women's rights and well-being. This Act, as described above, is often understood as the Act which absolves the Muslim husband of the duty to support their ex-wives beyond their obligation to repay the *Mehr* and to pay the maintenance for the three-month *iddat* period. Agnes draws attention to an innocuous clause (Section 3 (1)(a)) of the Act which she argues has more scope for protection against destitution than under Section 125 (the previously applicable law for Muslim women seeking alimony which only allowed for up to Rs. 500 to be claimed as alimony). Agnes explains, Section 3 (1) (a) stipulates that a divorced Muslim woman is entitled to a "reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband." (Agnes, 38) She adds that this clause, along with the Act's preamble that refers to itself as "an act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands," has been invoked by the Judiciary in defense of Muslim women's rights.⁴¹ The way in which courts across the nation have used the Muslim Women's Act to benefit the separated, divorced or destitute Muslim woman is suggestive of the judiciary's general tendency to recognize the discrimination they experience irrespective of the patriarchal-religious justifications the act is cloaked in. While this statement is undoubtedly a generalization of a complex and diverse judiciary, this general attitude is reflective of the judiciary's approach of recognizing the Indian Muslim woman beyond her religious identity.

Ania Loomba and Ritty A. Lukose, eds., *South Asian Feminisms: Contemporary interventions*, (Durham: Duke University Press, 2007), 44.

PART B: Construction of Shah Bano as a Passive Victim

The stream of events that constituted the “Shah Bano controversy” culminates with the enactment of the Muslim Women’s Act. However, the UCC debate, with the Muslim Personal Law falling under particular scrutiny, continues in India. The preceding sections explored the incidents and parties that shaped the Shah Bano controversy. Next, I examine how Shah Bano was constructed in this narrative. In the following sections, I argue that specific forces such as the BJP and the Muslim clergy leadership in particular constructed Shah Bano as a victim in need of saving. These appropriations made her story more easily coopted into the narratives of the other parties in the debate to serve their own purposes.

By Shah Bano

When Shah Bano filed a case against her husband demanding maintenance, she identified and presented herself as a victim. Her husband wronged her and she sought justice. Shah Bano is an active agent in this narrative. She presented herself as a victim *in order to* demand justice. She recognized that she has been wronged and is therefore a victim. While no one can definitively say why she did this, (a feeling of dissatisfaction, the dire situation of having to take care of her children, a certain conception of rights, a combination of these, or none of these?) she exercised her agency by approaching the Court and placing a demand. In doing so, she was accepting and expressing different facets of her situation and identity. She was a Muslim woman placed within the framework of the Muslim Personal Law and other religious expectations and norms. She was a wife abandoned by her husband. She was a mother of five children for whom she was responsible. And she was a citizen who approached the State (judiciary) to seek justice.

By the Muslim Clergy Leadership

The Muslim clergy leadership's construction of Shah Bano was, in contrast to this, more uni-dimensional in constraining her identity to being a *Muslim* woman.⁴² As a *Muslim* woman, she was expected to adhere to the dictates of the community (as mandated by a patriarchal leadership). In the eyes of this leadership, her husband's behavior was acceptable. For Partha Chatterjee, the placement of the woman in the domestic sphere and the consequent embodiment of culture in the woman is relevant here. Shah Bano, as a Muslim woman, was an embodiment of certain Islamic values (as deemed by these clergy members). Other aspects of her identity as wife, mother and citizen threatened the prominence of her identity as a *Muslim* woman. Therefore, in their view, she betrayed her community by speaking out. Under the pressure from powerful Muslim clergymen, she succumbed to the demand placed on her to identify herself first as a *Muslim* woman. In her letter, she rejected the Supreme Court judgment arguing that as a Muslim she should not accept anything contrary to "Islamic law." Reflected in her argument is the Muslim leadership's construction of Shah Bano; an expectation that reveals the manner in which the Muslim leadership had been constructing Shah Bano. This construction of Shah Bano as a member of the Muslim community, presented as her reason for rejecting the Court's "invasive" judgment, served the purpose of the Muslim leadership whose primary concern was the protection of the Muslim Personal Law.

Embedded in this construction of Shah Bano as first and foremost being a member of the Muslim community is the Muslim leadership's belief that it is their responsibility to govern the lives of their community members. The scope of governance here is not merely the actions of the

⁴² By Muslim clergy leadership, I am specifically referring to bodies such as the AIMPLB and the Jamat-e-Ullemah-e-Hind

community members within a mosque or other explicitly religious activities. One could say that it permeates the public-private divide although it is questionable how relevant such a divide would be in this context. To refer to Chatterjee's discussion of the embodiment of a culture in the woman again, the Muslim leadership has a specific interest in governing the life of the woman. The articulation of the leadership's response in terms of their responsibility to govern the life of the woman allows us to see how this project is one of "saving her." It is *their* responsibility to protect the woman, not that of the Judiciary. When the Judiciary tries to do so, it is an act of intrusion which must be condemned.

This "protectionist" agenda of the leadership is problematic. While they justify some of their actions in the name of their intention to protect Shah Bano, in reality, their concern with Shah Bano extends only as far as her role as a Muslim woman; they are merely protecting the Muslim Personal Law.

This protectionist agenda also deprives Shah Bano of any agency. She is reduced into an entity that needs to be protected, or rather, that which needs to be controlled in order for the Muslim Personal Law to be protected. Shah Bano here is merely a member of a religious community who needs to be controlled, especially because of her gender, in order to preserve the "integrity" of the religion.

By the Bharatiya Janata Party

Finally, I address the ways in which the BJP constructs Shah Bano. For the sake of clarity, I will focus on the response of the BJP although the BJP is only one body which has alliances with right-wing Hindu nationalists. The BJP explicitly states the implementation of the

UCC as one of its primary goals in its election manifesto.⁴³ This section is presented as a discussion of the BJP's plans to provide India with the "taste of a developed country."⁴⁴ Here is the description under the UCC header, the final entry in "Leap Forward."

Article 44 of the Constitution of India lists Uniform Civil Code as one of the Directive Principles of state policy. BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonizing them with the modern times.⁴⁵

Here, the BJP explicitly cites gender equality as the justification behind their support for a UCC. In fact, the UCC is presented as the *only* way to achieve gender equality. The possibility of achieving gender equality while maintaining a diversity in personal laws is not even considered.

This perspective, one lacking any space for plurality, is representative of the BJP's general approach. The tagline for the BJP, as expressed in its most recent election manifesto, is "Ek Bharat, Shreshtra Bharat." Translated as "One India, Prosperous India," the BJP's push for a single India, a single prototype Indian, a single UCC and a single *Hindutva* ideology reveals the BJP's discomfort with plurality.⁴⁶ The BJP's suggestion on how a UCC should be formulated should therefore be understood in the context of this imposing, confining, singularity of their approach.⁴⁷ Therefore, as many others have observed, there is the danger of "the best traditions," merely being a narrow set of "Hindu traditions." Critics have observed that such a process would

⁴³ Bharatiya Janata Party, *BJP Election Manifesto 2014 – Ek Bharat, Shreshtra Bharat*, (New Delhi: BJP Press, 2014), 41.

⁴⁴ *Ibid.*, 19.

⁴⁵ *Ibid.*, 41.

⁴⁶ Such a prototypical Indian would be a Hindi speaking, Upper caste Hindu, North Indian – often conceptualized as a male.

⁴⁷ I want to make clear here that I am not critiquing Hinduism or associating the BJP with Hinduism – although the bjp justifies a lot of their claims in the name of the religion. Discuss how Hindu beliefs or ideologies are in fact, encouraging of plurality.

be one of imposing the Hindu Code Bill on the entire population under the mask of a UCC.⁴⁸ It is worth noting here that even the Hindu Code Bill is not free of being interpreted in a gender discriminatory manner.⁴⁹ How is this discussion of the BJP's stance on the UCC and their motivations for it relevant to the ways in which Shah Bano is constructed? The BJP's interest in the Shah Bano controversy and the UCC debate lies less with their concern on gender justice and more with their aspiration for what the BJP refers to as "One India." The justification of gender justice serves as a mask behind which they can garner support for the UCC. The formulation of such a UCC, in the eyes of the BJP, is a step towards "Ek Bharat" or "One India." So what is Shah Bano here? Nothing but a pawn in their "One India" project. Shah Bano's situation is co-opted by the BJP to further its own interests.

I have looked at the motivations that prompted the BJP to use the Shah Bano controversy to advance their restrictive, uni-dimensional, nation-building agenda. But how does the BJP turn her into a pawn that serves their agenda? They do so by reducing her into a victim in need of saving – and incapable of being saved by her own community. The antagonism between the BJP

⁴⁸ The Hindu Code Bills of the 1950s comprise a set of laws that aimed to reform and codify Hindu Personal Law. There existed an incredibly wide range of procedures, guidelines, and laws for each of the various castes and sects amongst "Hindus." This set of bills includes the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. The BJP often refers to the Hindu Code bill as a model and justification for constructing a UCC. The justification that, as Hindus gave up their personal laws and accepted this codification into a single set of laws for all Hindus, other religious groups should be required to do so as well is also voiced in favor of replacing the personal laws with a UCC

⁴⁹ In *Seeing Like a Feminist*, Menon points out that acts within the Hindu Code Bill such as the Hindu minority and guardianship act (1956) also detracted from the secular laws applicable to all communities. It took Hindus out of the purview of the existing Guardians and Wards Act of 1890 that had hitherto applied to all communities. What this new law accomplished was that it established an aspect of 'Hindi Shastras' – 'father as natural guardian' – the law of the land for Hindus while, under the earlier law, the court which was the appointed guardianship had tended to retain de facto guardians i.e. the mothers. Thus, this new law within the Hindu Code Bill both reinforced 'Shashtras' for Hindus over secular law, and disempowered Hindu mothers. This shows that more uniformity does not mean more gender justice; Madhu Kishwar, *Codified Hindu Law: Myth and Reality*, "Economic and Political Weekly," August 2001.

and the Muslim leadership is an important context to the BJP's stance. The RSS, with which the BJP is closely associated with, has referred to Muslims and other minorities as foreigners who have come and "raped" Mother India, the land of Hindus.⁵⁰ A previous section discussed the threats that Muslims, as a minority, have experienced through the Babri Masjid demolition and the riots that followed. The Gujarat genocide of 2002, when the current Prime Minister of India, Narendra Modi ruled the state of Gujarat, is another incident that has been etched in the national consciousness as an act of violence against Muslims: an incident that was mostly condoned by the State.⁵¹ Given this antipathy towards the Muslim population in India, the Shah Bano controversy was an opportunity for the BJP to taint the Muslim community as a barbaric, backward community. By setting the narrative in terms of the failure of the Muslim Personal Law, which is governed by the All-India Muslim Personal Law Board, the blame and the responsibility is placed with the AIMPLB. The next step for the BJP is to argue for a UCC i.e. yet another set of laws to govern the subject, the woman. Shah Bano's character in this narrative is merely that of a victim. The only question is who is capable of governing, and therefore, of successfully saving, her. Much like the AIMPLB, the BJP too uses Shah Bano to further their own interests. By reducing her into a victim in need of saving, she is used as a pawn in the BJP's war against the Muslim leadership.

⁵⁰ Majeed, 21.

⁵¹ The series of events which took place in Gujarat in 2002 is often referred to as "riots." However, as scholars such as Martha Nussbaum have pointed out, I intentionally use the word "genocide" to show the extent and nature of violence that took place in Gujarat against the Muslim community. Martha Nussbaum, *Genocide in India, the International Community Looks Away*. "Genocide Watch," 2003, http://www.genocidewatch.org/images/India_Summer_03_Genocide_in_Gujarat_The_International_Community_Looks_Away.pdf (accessed on February 7, 2015)

I would also like to clarify here that I am not suggesting that only Muslim were adversely affected by the series of these events.

AIMPLB reduces Shah Bano into an entity that needs to be controlled to preserve certain “ideals.” The BJP uses her as a political pawn by ignoring her different roles and identities – as mother, wife, Muslim, woman, and India. She is merely a victim. The degree of attention that the issue received on a national scale because of the stakes of entities such as the judiciary, the INC, the BJP, and the AIMPLB was another source which drained agency away from Shah Bano herself. With the interests of these powerful actors receiving attention, Shah Bano’s portrayal of herself was easily overshadowed and what was left was a victim, a woman in need of protection or saving.

Shah Bano’s Contemporary and Foil: Shahnaaz Shaikh

While the Shah Bano controversy is part of the national consciousness even today, in a similar but, less well-known case, Shahnaaz Shaikh, aged 24, filed a civil writ petition in 1983 against the Union of India and Abdul Rab Kavish, her ex-husband. Shaikh’s case provides a contrast with Shah Bano’s narrative as a passive victim. In a letter Shaikh wrote to *Manushi*, a leading journal in India on women’s and gender issues, she explained,

I am a Muslim woman and have suffered under the peculiar implementation of Muslim laws in our country. I have filed a petition on the subject of Muslim personal law in the Supreme Court, and the petition is pending admission... There is nothing extraordinary for me to write about except that I am committed to the cause of Muslim women, who are a neglected lot, and whose plight is known only to a few.⁵²

There are two aspects of Shaikh’s petition that are relevant to our discussion. Firstly, in contrast to Shah Bano’s case in which the first respondent was her former husband, Khan,

⁵² Manushi, *Abusing Religion to Oppress Women*, 10.

Shaikh names the first respondent in her civil writ petition as the Union of India. Her former husband, Abdul Rab Kavish, was named as the second respondent. In doing so, Shaikh held the Union of India accountable for the discrimination and abuse she had undergone. In her petition, Shaikh explains this choice,

Respondent No. 1 is fully aware that Muslim women constitute over 4 crores in number and are a weaker section of the Indian society... Respondent No. 1 has not deemed it proper or necessary to make any laws to ensure social justice for Muslim women and have restricted themselves to law making only for Hindus, Christians and for Scheduled Castes and Tribes.⁵³

By placing blame on the absence of the application of just laws for Muslim women, Shaikh underscored the systemic foundation for the abuses that she experienced in her marriage, and placed the responsibility on the State. The question of personal laws, often framed in terms of the State interfering in “personal” matters, was re-conceptualized as a failure on the part of the State to treat women of all religions equally. Her argument that the Union of India had not performed its duty to make laws applicable to all Indians and had therefore “discriminated on the basis of religion” questioned India’s claim as a secular state and revealed how integral the question of what secularism in India is to this discussion of personal laws.⁵⁴

Secondly, while the petitioner in both cases is a Muslim woman who experienced abuse within her marriage, the objective behind Shaikh’s petition had a wider scope. She was not merely fighting for a relief or compensation for herself, she was arguing for “social reform and balancing legislation.”⁵⁵ In her petition, she explicitly stated, “If 40 million Muslim women

⁵³ Geetanjali Gangoli, *Indian Feminisms – Law, Patriarchies and Violence in India*. (Burlington: Ashgate Publishing), (2007); 27.

⁵⁴ Manushi, *Abusing Religion to Oppress Women*, 12.

⁵⁵ Gangoli, *Indian Feminisms*, 28.

citizens of the country benefit from the petition, my objectives will be fulfilled.”⁵⁶ By holding the State responsible and by presenting the petition as a cause for 40 million Indian, Muslim women, Shaikh was demanding a systemic change. Her focus on the systemic discrimination allowed for by the Union of India as opposed to a complaint requesting an adjudication on a personal matter was one of the strengths in this case. Shah Bano’s concern, and circumstances, in contrast, were much more limited to herself; she was seeking reparation in order to sustain herself and her children. Shaikh’s choice of this narrative made it harder for her to be reduced into a passive victim. However, this did not prevent her case from being co-opted by political interests; a series of events which eventually led her to repeal her petition.⁵⁷

Although the Muslim clergy leadership and the BJP attempted to discredit or co-opt her petition, Shaikh was articulate in expressing her identity and her stance on the matter. She denied the allegation made by the Jammat-e-Ulema-e-Hind that she had ulterior motives detrimental to the Muslim community. She stated, “The Jammat-e-Ulema-e-Hind, alleged to be looking after the causes of the public, ought to support and not oppose my petition... I say that the Muslim women are as much a part of the public and of the Muslim minority as are the Muslim men”.⁵⁸ While being critical of the Muslim clergy leadership, she also maintained that she “loves her religion and shall die as a Muslim.”⁵⁹ In contrast to the unidimensional character of a passive victim that Shah Bano was reduced to, despite having to withdraw her petition, Shahnaaz Shaikh upheld her demand for justice, condemned the Jammat-e-Ulema-e-Hind, clarified that she did not

⁵⁶ Manushi, *Abusing Religion to Oppress Women*, 13.

⁵⁷ The petition led to personal attacks against Shehnaaz Shaikh by Muslim fundamentalist groups and individuals, forcing her to go into hiding. In addition, she found to her dismay that her lawyer, Indira Jaisingh, was a member of the Hindu rightwing organization RSS, who wanted to use her case to malign Islam, and the Muslim community. Manushi, *Abusing Religion to Oppress Women*, 15.

⁵⁸ Manushi, *Abusing Religion to Oppress Women*, 11.

⁵⁹ *Ibid.*

wish to associate with the Hindu right-wing on this matter *and* maintained her religious identity. This is an instance of the difficult position that many Muslim women find themselves in: a position where she is called upon to make a choice between her “claims for gender equality and equal protection of law on the one hand, and her religious beliefs and community affiliations, on the other.”⁶⁰

Shaikh has also expressed that she felt “her minority status [Muslim minority] even within the women’s movement [which she felt] was Hindu feminism”⁶¹ The role of the women’s movement in this debate is yet to be discussed. Shaikh’s work after she withdrew her petition serves as evidence for her resilience in pursuing her objective of “social reform for over 40 million Muslim women in the country.” Shaikh went on to establish AEN, an organization which is one of the most prominent organizations advocating for Muslim women’s rights in India today. The following chapter will examine the work of AEN and another equally prominent organization, BMMA to understand how they challenge the uni-dimensional character of a passive victim that Shah Bano and many other Muslim women have been reduced to, and that too if the abuses that they face are recognized in the first place. The relevance of the work these two organizations are doing today becomes more evident in the context of the history of women’s organizations in India. Beginning with a brief history of women’s organization and proceeding to examine the work of AEN and BMMA, the following chapter will argue that AEN and BMMA challenge the construction of the Muslim woman as a passive victim and in doing so, redefine what Indian secularism means albeit in their own unique ways.

⁶⁰ Flavia Agnes, *Indian Feminisms*, 46.

⁶¹ Nivedita Menon, “Gender and Politics in India,” (New Delhi: Oxford University Press) 1999, 174.

Chapter Three - Activisms of Muslim Women's Organizations in India: *Bharatiya Muslim Mahila Andolan* and *Awaaz-E-Niswaan*

Women's activist organizations have had a substantial presence in the Indian subcontinent since colonial times as independent organizations and as the women's wing of other nationalist movements fighting for independence. The Muslim Women's Organizations which this chapter focus on are, in significant ways, responding to the trends set by women's organizations of colonial times and to the women's movement in India in more recent times. First, I will examine the construction of the "new woman," an idea whose formation many women's organizations, in addition to men involved in nationalist movement, during colonial times contributed to and an ideal they then aspired to.

The Women's Movement in India

The concept of the "new woman" emerged in the early 1900s within the context of a nationalist movement against the British rule. The "new woman" was defined as a "companion and help-mate to man, an ideal mother, and a credit to her country."⁶² This concept of the "new woman" set the ground for the following years of activism. The work of most women's organizations was limited to nation-building by "ameliorating worst situations arising from social customs."⁶³ They did not take part in political agitation – that was left to the men.

The prominent women's organizations of the time such as All India Women's Conference (AIWC), Arya Mahila Samaj and National Council of Women in India, all stayed

⁶² Forbes, *Women in Modern India*, 65.

⁶³ *Ibid.*, 68.

away from the term “feminism” which they saw was “western” and “antagonistic to men.”⁶⁴ Even in their support for the Child Marriage Reform Act, women’s organizations couched their support for a later age of marriage in terms of preparing women to fit their biologically determined role.⁶⁵ This reliance on very separate and unequal gender roles has continued to this day in the gendered citizenship in modern day India. The different rights and duties afforded through personal laws is only one instance of gendered citizenship in modern India.

Sarojini Naidu’s speech before the Special Congress in 1914 demanding voting rights is a great example of how the concept of the “new woman” was being used at the time. It claimed to be distant from “feminism” but at the same time demanded greater autonomy for women. Naidu said,

Never, never for we realize that men and women have their separate goals, separate destinies, and that just as man can never fulfill the responsibility or the destiny of a woman, a woman cannot fulfill the responsibility of man... We ask for the vote, not that we might interfere with you in your official functions, your civic duties, your public place and power, but rather that we might lay the foundations of national character in the souls of the children that we hold upon our laps, and instill into them the ideals of national life.⁶⁶

Her words reflect a dominant existing view of the time. However, this stance also served as a powerful and effective strategy. After all, the motion was passed with a 75% majority of the five thousand people present.

⁶⁴ Forbes also argues that it is easy to understand why they (women’s organization in the early 1900s) did not adopt a radical strategy. She cites the male support they received in the early years, their partnership with male dominated nationalist parties, and the choice between nationalism and feminism as reasons for this conservative (at least as it may seem today) approach
Forbes, *Women in Modern India*, 68.

⁶⁵ *Ibid.*, 88.

⁶⁶ *Ibid.*, 90.

The work performed by these women's organizations was crucial in furthering certain rights for women. However, this work was performed with the understanding of the "woman" as the "new woman." She was a citizen of India but not in the same way a man was a citizen of India. Moreover, for the new woman, her identity as an "Indian" was more important than her identity as a "woman." Often, nationalists persuaded women's organization to put aside their activism for women in order to fight for India's independence. Nationalists told women to not be divisive when national unity was at stake; the specific concerns of the woman were to be dealt with once independence was gained. This never happened.

Another important aspect of the women's movement is their relationship with religion. On one hand, there is a proclaimed identification with secular ideals. On the other, the early Indian feminist movement has been critiqued for its reliance on Hindu icons.⁶⁷ Firstly, the tendency for the women's movement in India to be "secular" by divorcing itself from religion is not surprising given that many gender-discriminatory, patriarchal practices are often traced back to religion for its justification. In its eagerness to separate itself from such archaic and discriminatory practices justified in the name of religion, the women's movement, in its early days, attempted to represent the "Indian" woman. This "Indian" woman was marked solely by her national identity and not by her religion. This prevented the women's movement from being able to represent the unique problems Muslim women faced.

However, at play here, although unmarked, was Hindu feminism. In trying to be secular, the women's movement refused to consider the religious identity of the new woman. What went overlooked was that the Hindu woman had become the norm. The Hindu woman *was* the Indian woman; it was only women of minority religious communities who were asked to strip off their

⁶⁷ The use of the Hindu Goddess Durga as the embodiment of female power is one example.

religious identity. The early Indian women's movement has been critiqued for its reliance on Hindu icons. This reliance furthered the communal identity in which being Indian and Hindu were made synonymous.⁶⁸ Any resistance from the minority was projected as anti-national and anti-secular. Therefore, in addition to the women's movement's assertion to be secular which prevented it from representing Muslim women, the movement further alienated minority-religion women with its implicit associations with Hinduism. It is this failure that gave rise to the need for organizations who are able to cater to the unique problems that they face as women belonging to a minority religious community.

AEN and the BMMA, as Muslim women's organizations, are two organizations in India today which are able to address these concerns.

Motivations and Formations: AEN and the BMMA as Independent Organizations

As mentioned towards the end of the previous chapter, AEN was founded by Shahnaaz Shaikh. Shaikh founded the organization as a response to the circumstances that pressured her to withdraw her petition against the Union of India and against her former husband.⁶⁹ Being isolated from the women's movement in India, she also understood the movement's inability to recognize the significance of her minority status as a Muslim. These experiences led her to the conclusion that change within the Muslim Personal Law should come from within the community and not from other nationalist or religious entities. Shaikh first formed a collective of women who experienced similar discrimination within their marriages. These discriminations were often justified within the Muslim Personal Law. Yasmin, a social worker who has been a

⁶⁸ Loomba and Lukose, *South Asian Feminisms*, 10.

⁶⁹ Awaaz-E-Niswaan, "Our History," Niswaan. <http://www.niswaan.org/our-history.html> (accessed on December 12, 2014)

part of AEN from its early days, describes the initial years as rough. AEN had no regular space to meet so they gathered in each other's homes. Locals often mockingly referred to them as the "women's judiciary."⁷⁰ AEN, formally founded in 1987, describes itself as "a vibrant feminist collective of students, academicians, activists from the women's movement and women who daily confront violation of their rights and evolve strategies to combat them."⁷¹

The story of the more recent formation of BMMA in 2007 is quite different. Noorjehan Safia Niaz and Zakia Soman are the founders of the BMMA. Niaz and Soman started working with Muslim women from low socio-economic backgrounds in 1992. Among the issues dealt with were education, child marriage, and discriminatory marriage laws. Their strategy was to educate and encourage women to stand up for their rights. An obstacle they frequently faced was the police officers telling the aggrieved women that the legal system could not do anything to help because they were Muslims and under Sharia Law.

Niaz explained to me that the issues Muslim women faced were not being acknowledged by any political party or religious leadership. With regard to the State, she said that while the previous government (INC) "used the community as a vote bank," the current government (BJP) has "always been antagonistic to the needs of the Muslim community."⁷² With regard to the Muslim community itself, Niaz said she was disappointed. For her, the Muslim community's leadership is limited to "religious leadership" and avoids what she calls "social leadership" – a combination that has nicely allowed for the gender-discriminatory practices to continue.⁷³

⁷⁰ Yasmin, interview by author, AEN Office, Bombay, India, December 17, 2014.

⁷¹ Awaaz-E-Niswaan, "About Awaaz-E-Niswaan," Niswaan. <http://www.niswaan.org/> (accessed on December 12, 2014)

⁷² Noorjehan Niaz, interview by author, AEN Office, Bombay, India, December 21, 2014

⁷³ Ibid.

Niaz added that Muslim leaders have “driven Muslim women more backward” by not allowing girls to study and by allowing patriarchal practices to thrive. It was in response to these conditions that Niaz and Soman formed the BMMA: an All-India coalition to serve as the voice of Muslim women and at the same time work with experts to appeal to the State for change.

I draw two points from my research of Shaikh and my interviews with AEN’s Yasmin and BMMA’s Niaz in terms of how they challenge the narrative of the Muslim woman as a passive victim. First, both groups recognized they couldn’t rely on others to defend their interests. Both were also acutely aware of how Shah Bano’s story had been appropriated. Shaikh, for her part, filed a writ petition in 1985 challenging the State to make the same law applicable to all women irrespective of their religion. She later founded AEN recognizing that the fight against this discrimination must come from Muslim women themselves. For their part, Niaz and Soman, also founded an organization to specifically challenge the gender discrimination within the MPL. Both groups recognized the inability of existing activism to recognize the unique challenges faced by them as women within a minority religious group.

Secondly, their work, even prior to the formation of each of the organizations, is a testament to their refusal to be reduced to victim status. The lives of these women are themselves a challenge to Shah Bano’s victimhood. In fact, with the founding of these organizations, they are pioneering a change in the narrative hitherto limited to the “plight of the Muslim woman.” AEN and the BMMA clearly exhibit a rejection of the Shah Bano stereotype and an exercise of agency. In other words, the rise of these organizations is a recognition of and a response to the failures of the early women’s movement, the Union of India, the two political parties i.e. the INC and the BJP, and the Muslim clergy leadership.

However, it would be a mistake to clump the two organizations together in everything. In the following sections, I will outline three ways in which each organization challenges the current situation of personal laws. The three aspects include the BMMA's and AEN's organizational structure; their work with respect to personal laws; and their overall visions for the UCC. While my discussion will highlight the unique characteristics of the BMMA and AEN, I will also note similarities in some approaches. Even as I inspect each of these aspects individually, the underlying questions will continue to be how the "Muslim woman" is being constructed and how they are inciting change in new directions within the UCC debate and in the larger question of secularism in India, albeit in different ways.

1. Organizational Structure: Reconstructing the Muslim Woman

Within this discussion of the organization of AEN and the BMMA, I will examine two components; the organizations' affiliations and structure.

Affiliations

Both AEN and the BMMA have refused to be affiliated with or to seek any support from political parties. The reasons why they would reject such an association are clear; they are well aware of the danger of being co-opted by the parties' own political agendas as was the case with Shah Bano. For instance, during the AEN's early days, when the organization was just a collective and met in each other homes, the Communist Party of India's (CPI) local division extended support to AEN. In our conversation, Yasmin recalled how a CPI member offered AEN a space in his office. However, AEN refused the offer in order to remain unaffiliated with any

political party.⁷⁴ The distinct existence of both the organizations without reliance on any political party has allowed them to maintain a degree of integrity to their cause of working with women: particularly Muslim women from lower socio-economic backgrounds. They have been able to pursue their goals independently without having to buckle under pressure from political interests. In making a conscious choice to remain separate from political parties, both AEN and the BMMA are also making the statement that an entity need not be dependent on political parties for social reform. They draw some degree of authority away from the political parties, however limited, in choosing to remain independent. There are more significant ways in which the organizations fragment this authority through their work: a topic I will discuss more in depth in the third section.

Structure

The AEN office is located in Kurla West, Bombay. The BMMA also has an office located in Bandra, Bombay.⁷⁵ Both areas have dense populations of Muslims from lower socio-economic backgrounds. Both offices are minimally furnished and only have basic amenities. At the BMMA office, all the women were seated on the floor. Not all these women are Muslim. Some of the women workers I met at the BMMA office were Hindu or Christian. During my visits, I saw women providing counseling sessions, holding their weekly meetings, and preparing a budget for the following month. Some others were discussing the Peshawar school massacre that had just taken place the day before in Pakistan. The AEN office had two tables: one which held a computer and the other which was being used as a dining table on my first visit. During a second visit to the AEN office, I witnessed a group of women planning their next literacy class

⁷⁴Yasmin, Interview by author, AEN Office, Bombay, India, December 16, 2014

⁷⁵The BMMA has another office located in Gujarat which is managed by the co-founder Zakia Soman. The one in Mumbai is managed by Noorjehan Niaz.

and a social worker taking down notes while listening to a woman who had come to file a complaint on account of the domestic violence she was experiencing in her marriage. The locations of both the offices ensure proximity to the women who will need the services, the support and the space they offer will be able to access it.



Figure 2: Moreswar Patankar Marg, street leading to the AEN Office in Kurla, Bombay
Source: Author

The organizations' investment in grassroots work is worth noting. As I noted earlier, AEN was formed from a collective of women who came together to discuss the discriminations they faced. The BMMA was formed following the founders' work to economically empower Muslim women through literacy classes and education. A quick perusal of the activities they conduct will portray both the organizations' commitment to grassroots work. This characteristic is important to bear in mind because it is a testament to their commitment to ensure that their work is not divorced from the day-to-day lives of Muslim women. This commitment also ensures that the Muslim woman is not merely reduced into a consumer. This level of engagement recognizes the discrimination that Muslim women face without reducing them to passive victims.

Alongside this grassroots work, AEN has established the Muslim Women's Rights Network, a network of approximately 250 organizations⁷⁶. Hasina Khan, a leader of AEN explains that no single advocate will be able to change laws and public attitudes.⁷⁷ This belief led her to form MWRN, a coalition that would place the rights of Muslim women as a "social agenda."⁷⁸ This network has worked with entities comprising of Muslim clergymen such as the AIMPLB and the Jamaat-e-Islami to protect the rights of Muslim women within the Islamic framework. MWRN has also attempted to establish an international presence: particularly in the South Asian subcontinent. Counterparts from Pakistan, Bangladesh, and Sri Lanka have attended regional conferences organized by the MWRN.⁷⁹ MWRN has also strived to work with the Minority Rights Groups and Women Living under Muslim Law organization based in the UK.⁸⁰ The MWRN wing of AEN points out that while AEN values its independence from political interferences, it also recognizes the need to work with other organizations like itself and with the Muslim clergy leadership in order to effect change.⁸¹ A significant part of the MWRN's work involves collaborating with the AIMPLB to encourage it to open itself up to a social reform. Through this, AEN is exhibiting that its highest concern does in fact lie with the betterment of, not just women, but with Muslim women. This is also a portrayal of AEN's recognition that much of the problems that Muslim women face can be traced back to the MPL: a law system that self-proclaimed guardians such as the AIMPLB and Jamaat-e-Islami have strived to preserve.

⁷⁶The leaders of BMMA were also initially affiliated with MWRN although they left the coalition following a difference in their visions with regard to personal laws.

⁷⁷ Ashoka India, "Hasina Khan." *Ashoka Awardee Profiles*, <http://india.ashoka.org/fellow/hasina-khan> (accessed on November 2, 2014)

⁷⁸ Ibid.

⁷⁹ Gopika Solanki, "Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India," (Canada: McGill University) 2007, 281.

⁸⁰Hindunet, "We go against Islam by refusing to stop injustices like triple talaq and polygamy," April 19, 2001, <http://hindunet.org/hvk/articles/0401/90.html> (accessed on January 19, 2015)

⁸¹Gopika Solanki, "Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India," (Canada: McGill University) 2007, 301.

Therefore, AEN is balanced in that while working with women on the issues they face on a day to day basis, they are also able to organize themselves at a national and international scale to get a wider understanding of the issues they're tackling. This balance where the national network is informed by the grassroots level work sets them apart from the women's movement in terms of organization. The AEN's wide-ranging scope is reflective of Khan's vision to address Muslim women's rights through two approaches: the women's personal, daily struggle against discrimination and the realm of legal reform.

The BMMA too, is anchored in their work with women on a day to day basis and also has a national presence. However, their national presence is *through* their grassroots bodies. Niaz explained to me,

We wanted it to be a movement. More broad based and open so that more and more women can join so that's why we consciously haven't registered to be an NGO. It's a loose network but there's also a level of structure because our experience with networks is that it's too loose and it's too – people will take on responsibility and then they don't do it. So we wanted to maintain a balance between being open and have structure so that it is functional movement.⁸²

Unlike the AEN, it is not registered as an NGO. The BMMA has “bloc councils” in about sixty districts in the country. Each state has a state council above which exists a national council comprised of ten leaders from each State. The issues that these councils directly engage with are education, health, security and law reform.⁸³ The BMMA's work with regards to the Muslim Personal Law is one of the two campaigns they run. Unlike the AEN, the coalition that the BMMA has developed is not amongst various leaders of organizations. It is a coalition of local women who have emerged to lead their own communities; a coalition which comprises of about

⁸² Noorjehan Niaz, Interview by author, BMMA Office, Bombay, India, December 20, 2014.

⁸³ Ibid.

50,000 women today. With this coalition the BMMA has maintained the balance of policy reform and grassroots work. Moreover, by creating a space for Muslim women to be leaders of their own communities, the BMMA has also successfully challenged the Shah Bano image of a passive victim that was imposed on the Muslim woman.

2. Visions for the UCC Debate: Pursuing Secularisms

AEN and the BMMA have distinct visions with regard to personal laws. In this section, I locate this difference in the varying ways they understand secularism. I argue that they are able to move the UCC discourse forward by pursuing these varying understandings of secularism through their activisms.

AEN sees itself as part of a larger sisterhood irrespective of caste or religion and united through the confrontation of their rights being violated.⁸⁴ They identify their “struggle for human rights” in the context of patriarchy and communalism. AEN is able to capture the complexity of their position of women who belong to a minority group when they state that, while they seek to “speak up for the rights of all women, their work focuses on Muslim women’s issues.” On one hand, they understand the challenges faced by women within a patriarchal society to remain “more or less the same.” On the other, prompted by the “intricacies and the complexities that Muslim women face,”⁸⁵ they have focused on the issues faced by Muslim women and the issues related to the voice and representation of Muslim women.

Given their sensitivity to the challenge of understanding the particular needs of the Muslim woman *and* being aware of the danger of communalism, AEN’s vision for the Muslim

⁸⁴Awaaz-E-Niswaan, “About Awaaz-E-Niswaan,” Niswaan. <http://www.niswaan.org/about-us.html> (accessed on December 12, 2014)

⁸⁵Ibid.

Personal Law is not uni-dimensional; they seem to have short term goals and a long term vision on this matter. AEN's work through the MWRN, which I briefly looked at in the previous section, is that of a facilitator between religious leaders and Muslim women's rights groups. They recognize the power that religious leaders continue to hold and try to work with them to adjudicate decisions and spread ideas that are more attuned to gender just ideals. Here, they are attempting to rework the ways in which the Muslim Personal Law is interpreted and enforced. However, in my conversation with Yasmin, I learned that this approach is only one strategy that the AEN is pursuing. Their long term vision with respect to personal laws is much more ambitious. Yasmin, joined in by other women at the AEN office, explained that they do not wish to have a Muslim Personal Law in the long run.

We, AEN, want a set of gender-just laws. Religion should not have any influence on the law. They are two separations ideas. Law should be for all citizens – irrespective of their faith.⁸⁶

But this does not mean that they want the Muslim Personal Law to be replaced by a UCC. Yasmin continued by saying, “we don't want a UCC either. UCC will only mean one political party having their say. We need a truly gender just set of laws.”⁸⁷ Yasmin proceeded to explain that the UCC, as it has been hitherto discussed in India, is insufficient because it has failed to take cognizance of the LGBTQ community in India.⁸⁸ This vision of the AEN is in stark contrast to their short term objectives exhibited through the MWRN: a vision which far transcends the UCC debate in India. When much of the discussion on the UCC has been limited to which religion the UCC should draw from and to what degree, AEN is envisioning a code which is not

⁸⁶Yasmin, Interview by author, AEN Office, Bombay, India, December 17, 2014.

⁸⁷ Ibid.

⁸⁸I did not come across this point on their website or on any of their publications

influenced by *any* religion. Yasmin continued by saying that *this* is what secularism really is: legal code which is separate from religion. She argued that if India claims to be a secular state, then it should not allow the realm of religion to influence the legal sphere where everyone ought to be perceived only as equal citizens.

The BMMA shares much of AEN's objectives in terms of empowering Muslim women economically and through education. However, when it comes to their approach to the UCC and the MPL, the BMMA's strategy is different from AEN's. The BMMA's objective with regards to the question of the MPL is that an MPL must definitely exist. Niaz gave me the following reasoning for this demand.

The constitution of this country allows all religious groups, minority as well as majority, to have their personal laws. So that's the first constitutional mandate that we have – having personal laws. So you have the Hindu marriage act, the Hindu Succession Act ...and so on. Each community has got its own personal law. So what we're asking is not anything new. All we're saying is that, everybody's got a personal law, we also want a personal law.⁸⁹

While on the same page as the AEN in terms of their opposition to a UCC and for similar reasons, the BMMA's point of divergence from AEN's vision is in the BMMA's assertion that the Muslim community must have a codified MPL. Niaz justified this demand on the basis that while other religions have their own personal law codes, Muslims do not have a codified one.⁹⁰ Niaz argued that the absence of a codified set of laws is one of the primary reasons why gender discriminatory practices have been so rampant within the Muslim community i.e., because it has been open to interpretation at the hands Muslim clergymen who function within, and uphold, a patriarchal structure. The BMMA's vision is to have a codified MPL that is gender-just *and* derived from holy Islamic texts such as the Hadith and the Quran. Like AEN, even the BMMA is

⁸⁹ Noorjehan Niaz, Interview by author, BMMA Office, Bombay, India, December 20, 2014.

⁹⁰To be clear, Muslims have a set of personal laws but they are not codified in the same way the Hindu Code Bill is.

striving for gender just laws but the BMMA's approach towards it is very different. Interestingly, both AEN and the BMMA describe their approach as being in line with secular ideals. Niaz argued that, in India, secularism is *not* the separation of State and Religion. Instead, it is the State treating all religions and religious communities equally: a stance this paper has been referring to as "Indian secularism." It is on this basis that the BMMA demands a codified MPL; that the Muslim community does not have a codified set of laws while others do is a failure on the part of the State in its claim to secularism.

The second aspect of the BMMA's objective that is worth examining is that it does not merely demand a set of gender just laws. They demand a set of laws derived from the Quran. This is in direct opposition to AEN's view that the law should not be influenced by religion. In fact, this difference was one of the primary reasons for the BMMA to disassociate itself from the MWRN. Niaz, however, is confident that this approach was crucial to maintaining the identity of a Muslim, Indian woman. Inherent in their objective is a desire to show that being a Muslim need not be in conflict with gender justice or with being Indian.⁹¹ The BMMA is able to assert this claim on the basis of their argument that the Quran is respectful towards women and that it is gender-just. It is the interpretation of the holy texts by patriarchal interests that has made it seem discriminatory towards women. Niaz used the case of polygamy as an example to explain this.⁹² She argued that, although the clergy leaders interpret the Sharia law such that a Muslim man can have up to four wives, this is a contrived understanding of what the Quran states. She points out that while the Quran states that a man may have up to four wives, it also states that a man ought to love all his wives equally *and*, at another point, that it is not possible for a man to love his

⁹¹ Noorjehan Niaz, Interview by author, BMMA Office, Bombay, India, December 20, 2014.

⁹² Polygamy is illegal in India except within Muslim communities because it is argued that the Sharia Law allows Muslim men to have up to four wives.

wives equally. When we consider all these points, Niaz concludes, the Quran does not allow polygamy. Using similar lines of arguments and drawing attention to portions of the texts that is often overlooked, the BMMA argues that the Quran is gender just and that an MPL, based on such an egalitarian interpretation of the text should be developed and adopted.

At first glance, the objectives of AEN and the BMMA may seem identical. They are both Muslim women's organizations striving to empower Muslim women from lower socio-economic backgrounds. Both organizations also construct the Muslim woman as one who is capable of exerting agency. Moreover, in addressing the problems allowed for through the existing MPL, they both demand secularism. However, each of the organizations understands secularism in very different ways. For AEN, secularism is the separation of law and religion whereas for the BMMA, secularism is the law being accepting of religions equally.

These two stances are representative of the two prominent strands of secularism that is prevalent in India. Each of the approaches takes us to two sets of questions. With the AEN, an unavoidable question is that of plausibility. In a nation with diverse religious beliefs and strained communal relations, how does one bring up the proposal to remove religion from the legal sphere without being accused of communalism and possibly leading to worse communal relations? I witnessed an opposition to this idea even from Niaz, the leader of an organization that shares many of the same concerns that AEN is attempting to address. When I brought up the AEN's approach of separating religion and law to Niaz, she referred to them as "atheists." She was disappointed that they were not accepting the significance of religion and spirituality in a person's life. But perhaps, more important than the question of practicality is whether secularism as the separation between the State and religion would be desirable, as Niaz may point out. Secularism in the West is generally understood in the way that the AEN understands it. It is,

therefore, an ideology and an interpretation that has much traction making it harder for us to conceive of secularism in any other way. Is this secularism, understood as a blanket separation between State and religion, necessarily the ideal we should universally aspire for?

The approach that the BMMA is advocating allows for religion to permeate the legal realm. But to what extent should religion influence governance? Or, to take a different perspective, do we only advocate for rights that are made permissible by the religion? The latter is a question that the BMMA has tried to overcome by arguing that their religion is in tune with the rights they are advocating for. However, if this were not the case, where does one draw the line? The contrast in AEN's and the BMMA's approach presents another way of framing this question. Does the State view its people merely as citizens stripped of other identities? Or, does it acknowledge and work with its nation as a people each of whom is a site of various identities?

These differences can be mapped on to the different secularisms that scholars such as Tejani, Nandy and Bhargava, amongst others, have discussed. Tejani provides a very helpful categorization of the different secularisms present in India. She identifies four interpretations. The first is the "liberal left" in which politics and religion ought to be separate. Second is the idea that secularism is an import. This view holds that, being neither indigenous nor appropriate to India, secularism is an imposition that will erode the uniqueness of Indian culture. The third type is one held by the *Hindutva* proponents who argue that recognition of minorities is pseudo-secularism. Tejani then identifies an interpretation that Rajeev Bhargava, a scholar, holds. Bhargava argues that secularism needs to move beyond the opposition to religion. His stance is described as a "spiritualized, humanized, secularism."⁹³ In addition to these four categories, I would add a fifth one; Gandhian secularism.⁹⁴ The phrase, *sarva dharma samabhava* (all

⁹³ Tejani, Shabnum, *Indian Secularism* (Indiana: Indiana University Press, 2008.), 10.

⁹⁴ Tejani does discuss Gandhian secularism however she places it within the liberal-left's secularism.

religions are true) captures this fifth interpretation of secularism. Arguably, this final interpretation is the one that the Indian Constitution is aspiring to.

In the essay, *The Distinctiveness of Indian Secularism*, Bhargava points out that “separations” in the constitutional history of India was never understood to mean the blanket exclusion of religion from the state.⁹⁵ Both AEN and the BMMA would agree with this statement. AEN would then, taking a stance similar to that of the liberal-left’s, argue that this is a problem that needs to be rectified. The liberal-left’s stance is given a new kind of credibility when this demand for removing religion from the law is made by an organization that identifies itself as a Muslim women’s organization. The AEN is less concerned with the “Indian-ness” of the stance and more with the well-being of women, especially Muslim women. In contrast to this, the BMMA, while agreeing with Bhargava, will contend that because the State interacts with religious matters, it should do so on equal terms. In this case, “equal terms” is interpreted as a demand to have a codified set of laws (which are also gender-just) for the Muslim community just as the Hindu and Christian communities have. The BMMA also stands by the Gandhian secularism i.e., the stance that they identify as Indian secularism. In basing their activism on this ideal and by reinterpreting the Quran in a gender-just manner in order to develop a set of laws for the Muslim community, the BMMA is showcasing how secularism *can* be understood beyond the opposition of State and religion.

By presenting these two strategies and by implementing ways to achieve their objectives, AEN and the BMMA are articulating approaches that have not yet been expressed with this clarity in the UCC debate. By articulating these different stances in their interaction with the

⁹⁵ Aakash Singh and Silika Mohapatra, eds., *Indian Political Thought: A Reader*. (London ; New York: Routledge, 2010.), 6.

UCC discourse, they are driving the debate forward. Their engagement with the debate is giving it a new momentum which is not limited to political interests of communalism or vote bank politics. They may not have answers which are capable to addressing every complexity in the debate, but they are definitely leading the nation to ask questions integral to the discourse.

3. The Work of Legal Pluralism: Fragmenting Authority

AEN is a registered NGO as per the Societies Registration Act of 1860. The BMMA, in contrast, is structured as a “broad-based movement.”⁹⁶ However, much of the work that both AEN and the BMMA do is very similar to what NGOs across the nation do. This is true for most of their programs ranging from literacy classes, vocational training, and financial empowerment workshops, to counselling sessions. India has seen a proliferation of NGOs since the 7th Five-Year Plan, from which point Government funding for, and reliance on, NGOs have also increased exponentially. The rise of NGOs was seen as a form of pluralization and decentralization of State power. In other words, it was thought of as a welcome move from the existing centralist tendencies of the State. However, how valid is the claim that NGOs are making the governance sphere more pluralistic if their activities are limited to activities such as teaching women the alphabet or providing counselling? These activities are, without doubt, valuable. But they do not necessarily challenge the centralist governance of the State. AEN and the BMMA however, do much more than this. In the following paragraphs, I argue that the work of AEN and the BMMA significantly fragment both State authority and religious authority.

⁹⁶ Noorjehan Niaz, Interview by author, BMMA Office, Bombay, India, December 20, 2014

AEN educates the women who approach the organization for counselling and literacy lessons to think about the larger framework of problems they are entangled in. They are encouraged to think about change at a wider scale and to partake in the MWRN's activities which involves campaigning and other political activities. The BMMA holds workshops and discussions in its village level and district level sessions where local, mostly Muslim, women brainstorm what the reformed Muslim Personal Law should be.⁹⁷ In each of these cases, these women are partaking in activities that allow them to affect governance.

AEN's and the BMMA's work through the *nari adalats* (women's courts) is what I would like to discuss in depth in this third and final section of the chapter. This final aspect of their work is worth examining in depth because the presence of *nari adalats* is a fairly recent and unique development. What makes *nari adalats* an exciting element in this discussion is its role in creating a sphere of legal pluralism and in posing a significant and worthy challenge to both state and religious authorities.

Nari adalats is based on the existing structure of *lok adalats* (people's courts). The *lok adalat*, a form of alternative justice dispensation of dispute resolution, is an innovative contribution from Indian jurisprudence.⁹⁸ *Lok adalats*, drawing from Gandhian principles, are based on the *Panchayati Raj* (local self-governing body) mode of governance. *Nari adalats* are a form of *lok adalats* exclusively managed by women. The *nari adalats* run by these Muslim women's organization are remarkable because they adjudicate on religious matters as well; a sphere that was believed to be exclusive to the men.

⁹⁷ After an impressively comprehensive series of such sessions and following consultations with activists and legal experts, the BMMA has drafted a bill which can be found here: <http://bmmaindia.blogspot.com/draftbill>

⁹⁸ They are usually organized through the Legal Services Authority which is a body under the State judiciary.

While both AEN and the BMMA run *nari adalats*, the way they are conducted differ from each other. In the case of the AEN, the *nari adalats* are run by the social workers of AEN whereas in the BMMA offices, it is local women themselves who run *nari adalats*. The BMMA offers regular workshops to train women on reformed, gender-just Islamic Law on the basis of which they then make their decisions. They keep an account of all the cases that are heard before the *nari adalats* and function in a similar manner to other *adalats*. Women approach the *nari adalat* with complaints ranging from domestic abuse to demands for maintenance. The goal of the *nari adalats* that the BMMA and AEN run is to provide an alternative judiciary to the male dominated Sharia law courts that they would otherwise have to resort to.⁹⁹ As most women typically do not have access to the mainstream judiciary, these *nari adalats* serve as their own option of reserving a gender-just adjudication.



Figure 3: Image of a poster at the BMMA Office titled *The Sharia Adalat Laws*. These are the reformed laws which the *nari adalats* base their decisions on.

Source: Author

⁹⁹ Although in most cases, they do not approach these courts knowing that the decision will not be in their favor. Most women from lower socio economic backgrounds typically are not able to access the mainstream judiciary either.

However, do the judgments of the *nari adalats* have any standing? Do they have any power to enforce it? If these *nari adalats* are organized with support from the Legal Services authority, then their judgements have a certain legal standing. But more relevant here is whether *nari adalats* are able to enforce their judgments. The BMMA reports that it has had an 87 percent rate of success in enforcing its judgements.¹⁰⁰ How are these *nari adalats* able to enforce its judgment this successfully? They rely on “honor” and “shaming;” or “veiled or unveiled threats” to exert their power.¹⁰¹ AEN reports instances where they have texted, phoned, and followed a man until he appeared for the case at their office in Kurla. In other cases, they “threatened” the man by stating that if he does not obey their adjudication as per the gender just law they have drafted, they will file a case at the local court. In most cases, the respondent wants to avoid such a confrontation and agrees to accept and follow the judgment of the *nari adalat*.

By appropriating the familiar political structure of the panchayat and the power of shaming, a tool that has much traction in most of the communities that AEN and the BMMA work with, these *nari adalats* are able to successfully run a parallel system of jurisprudence: one that is better than the mainstream judiciary in that it is much more accessible to the Muslim women from lower socio economic backgrounds. In doing so, they are not only doing what local courts have been unable to do, they are also replacing the male dominated Sharia courts.¹⁰² This alternative form of jurisprudence, where Muslim women themselves are developing, interpreting, adjudicating *and* enforcing the law exists in stark contrast to the socio-political legal tangle that Shah Bano found herself in 1986. Whereas Shah Bano was subjected to sets of laws mandated by

¹⁰⁰ BMMA, “Booklet on Legal Reform: Rights of the Muslim Woman.” (2013), 8.

¹⁰¹ Sylvia Vatuk, “Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law,” *Modern Asian Studies* 42 (2008), 502.

¹⁰² These courts fall under the purview of the AIMPLB

self-interested political and religious groups, Muslim women today are developing an alternative legal system. Whereas multiple actors reduced Shah Bano to a passive victim, my research highlights how Muslim women have become legal reformers, adjudicators, and enforcers.

Conclusion

As a young girl, I saw India as the embodiment of cultural diversity. The reality, however, was far more complex. Embarking on this project has been a process of exploring this complexity for me. As a researcher, I found new ways of examining and evaluating this rich diversity. As a minority woman, I have felt both rejected and encouraged in this exploration of the UCC debate in India.

There is ample literature available on the Uniform Civil Code debate in India and its significance in a range of fields including, but not limited to, gender justice, communalism, minority rights and human rights. These accounts discussed the Muslim Personal Law the most and the Muslim woman was considered to be the one who was the discriminated the most. However, missing from the discourse on the Uniform Civil Code and personal laws was the perspective of Muslim women themselves despite being the object of much of the conversation.

The aim of this paper was to show how Muslim women activists have entered the UCC discourse in a way that has challenged the construction of the Muslim woman as a passive victim. I was able to make this argument by focusing on the work of two prominent Muslim women's organizations in India; *Awaaz-e-Niswaan* and the *Bharatiya Muslim Mahila Andolan*. The theoretical framework provided by scholars such as Spivak was particularly helpful in parsing out the implications of constructing the Muslim woman as a passive victim. The position that the Muslim woman was placed in as a minority woman had initially made me feel alienated from my nation as a minority woman myself. But meeting the women at AEN and the BMMA who are continually challenging the intersection between their national and religious identity has made this journey an inspirational one for me. It was also pivotal in enabling me to recognize the value of the work that AEN and the BMMA are doing.

My primary research on AEN and the BMMA which comprised of visiting the offices, and speaking with a few leaders and workers at each of the organizations gave me a strong framework within which I was able to make sense of their work. It was this experience which prompted me to shift my focus from the two Muslim women leaders, Niaz and Khan, to the organizations as a whole. This shift was helpful in enabling me to portray how three aspects of AEN and the BMMA, the structure, the work, and the visions, engaged with the UCC discourse and pushed the boundaries of this conversation.

AEN and the BMMA contribute invaluable to the UCC discourse and yet have not been studied sufficiently. I believe that the discussion of the contributions that AEN and the BMMA make is most significant input that my paper makes to the existing body of knowledge. During my secondary research for the paper, I came across the works of scholars such as Sylvia Vatuk and Nida Kirmani, who have explored Muslim women's activism in India. Both these scholars have also discussed AEN and the BMMA. While making valuable contributions, neither of these works examine how these organizations are challenging the notion of the Muslim woman as a victim with specific reference to the UCC discourse.

Moreover, my research has also enabled me to capture some significant differences between the approaches of each of these organizations: differences that have not been sufficiently explored previously. AEN's and the BMMA's varying visions for personal laws being the most crucial one. AEN, understanding secularism as a blanket separation between religion and state, argues that no religion should have any influence on the law. They advocate a set of laws that aspires to transcend even the UCC by factoring in the concerns of the LGBTQ community as well. The BMMA, in contrast, argues for a codified MPL which is formulated from a reformed, gender-just interpretation of the Quran. The BMMA's interpretation of

secularism is closer to what Bhargava refers to as “Indian secularism.” This Indian secularism is a setting where the dominance of either religion or state is acknowledged as a problem. Yet, it aspires to a more contextual, fluid interaction between these two realms in order to provide space for both identities. The presence of these two interpretations of secularism, in addition to being valuable for displaying the diversity and complexity amongst Muslim women’s activists, is significant for the momentum that they, in interacting with each other, provide for the UCC debate.

AEN and the BMMA use these interpretations of secularism to set up courts where they independently or, alongside Muslim clergymen, adjudicate. Learning about the ways in which these courts fragment state and religious authorities was an exciting discovery. This form of adjudication was made possible because of their distinct visions for personal laws stemming from their varying interpretations of secularism. These *nari adalats* are therefore one of the ways in which AEN and the BMMA have been able to point the UCC discourse in new directions.

While the primary research I conducted played a crucial role in this paper, it was limited in that I only had the opportunity to speak with a few key leaders in each of the organizations. I was not able to speak with women who approached the organization seeking help to understand the organizations from that perspective. In addition to this, the paper is limited also in that it does not explore the global connections that can be made through each of the organizations. While I hope I have been able to portray the national context within which the organizations have been working, I have kept aside the global scene within which these organizations exist in. Exploring the work of the AEN with organizations from other countries or the BMMA’s strategy in the context of a more transnational ideal of Islamic feminism would provide for a much richer analysis of their work.

I have personally found inspiration in the work that the AEN and the BMMA does: albeit in different ways. As I had mentioned briefly in the introductory chapter to the work, a significant part of the motivation for this work came from my exploration of what it means to be a member of a minority community within a nation where dominant powers claim exclusive rights to representation. The BMMA's assertion for a multiplicity in one's identity where there is no need for conflict between a Muslim woman's identities as a Muslim, as a woman or as an Indian was liberating for me. Learning about AEN's concern for the LGBTQ community in India was an important moment for me because it defied an assumption about the organization that I had unthinkingly made. It had not even crossed my mind that a Muslim women's group would be concerned about LGBTQ rights. AEN's stance reminded me of the value in working across different perceived, identity-boundaries that may have been erected for a variety of reasons. The work of both organizations imbued in me a sense of hope as the Indian nation, like much of the world, strives to find ways of navigating differences while creating spaces for these differences.

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